IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/07/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Criminal Revision Case No. 851 of 2003 and Criminal Revision Case No. 852 of 2003
and
Crl.M.P.Nos. 5092, 5093/2003 and 5211 to 5216/2003

State represented by
Additional Superintendent of Police,
CB CID, Metro Wing, Chennai-2. ..Petitioner in both Revision Cases/
Petitioner/Complainant.

-Vs-

1. Tmt. Indirakumari,
2. R. Venkatakrishnan,
3. P. Damodarasamy,
4. J. Murugesan,
5. L. Arumugam,
6. C. Shanmugasundaram. ..Respondents in both Revision Cases/
Respondents/Accused.

Criminal Revision Cases filed under Section 397 and 401 of Code of Criminal Procedure to set aside the order passed in Crl. M.P.No. 527/2003 and Crl.M.P.No. 526/2003 respectively dated 13-6-2003 in Spl.C.C.No.3/97 on the file of XI Additional Special Judge, Chennai.

!For petitioner in both cases: Mr. I. Subramanian, Public Prosecutor,
assisted by Mr. P.T. Ramkumar, Government
Advocate.

^For 1st Respondent: Mr. S. Manimaran.

For 2nd respondent: Mr. Asokan, Senior
counsel for Mrs. Geetha Asokan.

For respondents 3,5 and 6: Mr. Rupert J. Barnabas.

For 4th respondent: Mr. Satyanarayanan for
Mr. S. Karthikeyan.

:COMMON ORDER

Crl. Revision Case Nos.851 of 2003 and 852 of 2003 are directed against the order dated 13-6-2003, made in Crl.M.P.No.527 of 2003 and 526 of 2003 respectively on the file of the XI Additional Special Judge, Chennai.

2. The prosecution had filed Crl.M.P.No.526 of 2003 under Section 311, Code of Criminal Procedure praying that one Madappan, who was at the relevant time working as Industrial Co-operative Officer to be examined as additional witness. In Crl.M.P.No. 527 of 200 3 the prosecution had prayed for examination of one Balasubramanian, cited as list witness No.4 (L.W.4) in the charge-sheet and one Pollachi Jayaraman, cited as list witness No.124 (L.W.124) in the chargesheet and recalling of P.W.8, Chenninathan. Both the petitions were opposed by the respondents/accused. By the impugned order dated 13-6-2003, the learned Special Judge dismissed both the petitions holding that the prosecution has filed these petitions to fill up the lacuna, belatedly and if the petitions are allowed, t he accused will be prejudiced.

Questioning the said order, the Additional Superintendent of Police,C.B. C.I.D., Metro Wing, Chennai-2-complainant has preferred the above Revisions under Sections 397 and 401, Cr.P.C.

3. When the stay and vacate stay petitions came up for hearing, in view of urgency and in the light of the statutory provisions contained in the Prevention of Corruption Act, 1988, by consent of all the parties, both the Criminal Revision Cases are taken up for final disposal.

BRIEF FACTS

4 (a). On a complaint lodged by one V. Viswanathan (P.W.3), the Secretary to Government, Handlooms, Handicrafts, Textiles and Khadi Department, Government of Tamil Nadu, a case in C.B. C.I.D., Metro Cr.No.6/96 was registered on 15-7-96 against the first accused and others under Sections 120-B, 167, 409, 407(A) I.P.C. and under Section 13(2) read with 13 (1)(c) and (d) of Prevention of Corruption Act, 19 88. The case of the prosecution is that first accused-Tmt. Indirakumari was functioning as Minister for Social Welfare in the A.I.A.D.M. K., Government from 1991. Later, with effect from 16-11-94 she was also allotted the portfolio of handlooms in addition to the earlier portfolio. She continued as a Minister, a public servant, till the new Government assumed charge in May, 1996. Second accusedVenkatakrishnan was the Junior Personal Assistant to first accused and he was also a public servant. Third accused-Damodarasamy, a businessman was doing steel business in the name and style of M/s. Talent Alloys and Steel Corporation, Coimbatore. Fourth accused-Murugesan was running a provisional store by name M/s J.M. Stores at Poonamallee. Fifth accused-Arumugam was a part time contractor to third accused-Damodarasamy and proprietor of M/s Prasanna Textiles and Chemicals, a fictitious company and benami of A-3. Sixth accused-Shanmugasundaram was the driver of third accused and the proprietor of the company by name M/s. Talent Cotton and Yarn Company and he was the benami of A-3. Jagadeesan (P.W.6) was the Managing Director of Tamil Nadu Textile Corporation, Coimbatore in the cadre of District Revenue Officer.

(b). The Government of Tamil Nadu decided to continue the scheme of Free Supply of Uniform for school children studying from I Standard to VIII Standard for the year 1994-95 also. By G.O.Ms. No. 236 dated 17-08-94, the Government ordered the co-optex to procure 40.40 lakhs metres of white cloth and also ordered Tamil Nadu Textile Corporation to procure 10 lakhs metres of white cloth for the free uniform supply scheme. When the Managing Director of Co-optex informed that they could not supply the said quantity of white cloth before 15-11-94, Thiru Pollachi Jayaraman, Chairman,Tamil Nadu Textile Corporation, Coimbatore by his letter dated 10-10-94, requested the Government to divert the allotment of white cloth to Tamil Nadu Textile Corporation, Coimbatore. Accordingly, the Government re-allotted the order for supplying of 40.40 lakhs metres white cloth to Tamilnadu Textile Corporation, Coimbatore by G.O.Ms.No. 329 dated 21-12-94. A-1 and A-2 called approver Jagadeesan (P.W.6) to her (A1's)chamber at Secretariat, Chennai and introduced A-3 and instigated approver Jagadeesan to call for tender for the supply of 40.40 lakhs metres of white cloth and finalise the tender in favour of A-3 by abusing their official position as public servants. The Government passed G.O.Ms.No. 6 dated 11-01-95, permitting Tamilnadu Textile Corporation to procure 40 .40 lakhs metres of white cloth from M/s. Prasanna Textiles and Chemicals at the rate of Rs.19.50 per metre. M/s. Prasanna Textiles purchased substandard quality of white cloth procured locally and from other States at cheaper rates and supplied to the District Social Welfare Officers. Thus the offence of Criminal breach of trust on the funds of the Tamilnadu Textile Corporation was committed by the approver Jagadeesan, on the abatement of accused A1, A2,A3 and A5 to the tune of Rs.3.44 crores.

(c). As per G.O.Ms.No.175-Handlooms, Handicrafts, Textiles and Khadi Department dated 03-08-94, the Government have ordered the continuance of the scheme of Free Supply of Sarees and Dhothies to the rural landless agricultural labourers as well as to those living below the poverty line in slums in urban areas for Pongal, 1995. The number of beneficiaries was fixed as 60 lakhs women and 60 lakhs men. In G.O.Ms.No. 5-Handloom Handicrafts, Textiles and Khadi Department dated 10-01-95, the Government have ordered for the procurement of additional 5 lakhs sarees and 5 lakhs dhothies for Pongal, 1995. In view of the diversion of stock held under this scheme to the requirements under Old Age Pensioner's Scheme, the Managing Director,Cooptex informed a short fall of 10 lakhs sets of dhothies and sarees and requested to arrange for additional allotment. In the month of January, 1995 accused 1 and 2 called approver Jagadeesan to Chennai and instigated him to allot the order for procuring 7.5 lakh sarees and dhothies to the companies to be named by A-3. Thereupon, approver Jagadeesan allotted the production of 3 lakhs sets of sarees and dhothies to three companies, namely, M/s. Prasanna Textiles and Chemicals, M/s. Sri Lakshmi Textiles and M/s. Selvanayaki Textiles (one lakh set for each company). However, the said companies did not supply sarees and dhothies to Tamil Nadu Textile Corporation till the end of April, 1 995. Then third accused approached 1st and 2nd accused for relaxation of specification of sarees and dhothies. On 17-4-95 revised specification was handed over to the Director of Handloom and Textiles by approver Jagadeesan and Special Officer of Palladam Society. A-3 procured sarees and dhothies in the lesser specification through Shanmugasundaram (A6), Sampathnathan and Balasubramaniam from Somanur and other places at cheaper rate and supplied to Tamilnadu

Textile Corporation which were procured by the Co-optex. For the supply of sarees and dhothies under reduced specification, Co-optex/Government paid at the rate of Rs.57 per saree and Rs.43 per dhothi, without reducing the rate correspondingly to the revised specification. Thus, there was a total financial loss of Rs.2,19,44,301/-. Similar procedures were followed in the year 1995-96. Here again, A-1, A-2 and A-4 caused a wrongful loss to Tamil Nadu Textile Corporation/Government to the tune of Rs.5,79,61,000/-.

(d). P.W.6 Jagadeesan (approver) was examined and he has explained the entire facts in his deposition. While he was the Managing Director of Tamil Nadu Textile Corporation, Coimbatore, L.W.4Balasubramanian was the Company Secretary/Purchase committee Member and L.W.124-Pollachi Jayaraman was the Chairman of Tamil Nadu Textile Corporation. Even though L.W.4 was summoned, he was not examined by the erstwhile Special Public Prosecutor who was appearing in this case, since he felt that his evidence was not necessary. But, now the prosecution feels that his evidence is important since he would corroborate P.W.6-Jagadeesan (approver) in all material particulars as well as the complaint made by the District Social Welfare Officer, Ramnad in respect of short supply of uniform cloth to Ramnad District in the year 1994-95. Hence his evidence is essential to arrive at a just decision of the case. Regarding L.W.124-Pollachi Jayaraman, his evidence is required to prove the letter dated 10-10-94 and also the circumstances in which the said letter was written and other connected facts in respect of uniform supply for 1994-95. Hence his evidence is also very much important for the prosecution. It will enable the Court to come to a correct conclusion. The recall of P.W.8-Chennianathan is just and necessary to speak about the order of allotment of uniform cloths to be supplied to 21 Districts during the year 1995-96 and connected facts. It is further stated that during the examination of P.W.2 5, Vimalda Daisy had deposed that one Madappan was the Industrial Co-operative Officer at the relevant point of time and he has maintained the register. The stock register was marked through the said witness as Ex.P-68. It is just and necessary to summon Madappan as additional witness for the prosecution. In these circumstances, the prosecution has filed crl.M.P.Nos. 526 and 527/2003 under Section 311, Cr.P.C. before the trial Court to summon/recall the above witnesses for the purpose of examination. Both the applications were strongly opposed by the respondents-accused by filing counter affidavit. The learned trial Judge after hearing the arguments of both sides, affidavit and counter affidavit, reply and other connected materials, dismissed both the petitions on 13-6-2003; hence the above Revisions.

5(a). Learned Public Prosecutor has raised the following contentions:-

i) The reasoning of the Special Judge that the request of the prosecution for recalling the witness i.e., P.W.8 (Chenninathan), who was already examined, and for examining new witnesses was made belatedly, cannot be sustained in view of Section 311, Cr.P.C. According to him, the said provision enables the prosecution and the accused to recall or re-examine any person or any witness at any stage if his evidence appears to the Court to be essential to the just decision of the case.

ii) Inasmuch as the evidence of L.W.4-Balasubramanian, L. W.124-Pollachi Jayaraman and one Madappan are essential for arriving at a just decision of the case, learned Special Judge ought to have allowed both the applications filed by the prosecution.

iii) The conclusion of the Special Judge that there is no bona fideness in the claim is baseless and his order rejecting their applications is liable to be set aside.

(b). On the other hand, Mr. Asokan, learned senior counsel, Mr. Rupert J. Barnabas and Mr. Satyanarayanan, learned counsel appearing for respondents have raised the following contentions:

i) Since the impugned orders are 'interlocutory' in nature, in the light of the specific provision contained in Section 19 (3) (c) of the Prevention of Corruption Act, 1988, the above Revisions by the State are not maintainable and in view of the specific bar stipulated therein, no Court has power to stay the proceedings initiated under the Prevention of Corruption Act.

ii) The petitions filed by the prosecution do not disclose any material or reason which gives rise to examination or reexamination of the witnesses. Further, once the prosecution dispensed with the witnesses, they have no power to recall the same witnesses at a later point of time;

iii) There is no bona fide intention in the claim of the prosecution and the petitions were filed due to mala fide intention.

6. I have carefully considered the rival submissions.
Points for consideration:

7. (i) Whether the Criminal Revision Petitions are maintainable in view of specific bar provided under Section 19 (3) (c) of the Prevention of Corruption Act, 1988?

(ii) Whether the orders under challenge are " interlocutory" in nature, and the same can be agitated by way of revision before this Court under Section 397, Cr.P.C.?

(iii) Whether the impugned orders of the Special Court are sustainable in the light of Section 311, Cr.P.C.?

iv) Whether the permission sought for by the prosecution for examination and re-examination of witnesses is on bona fide grounds or with mala fide intention as claimed by the respondents/ accused?

8. Since Crl.M.P.Nos. 526 and 527 of 2003 were filed by the prosecution before the trial Court under Section 311, Cr.P.C. for examination of L.W.4-Balasubramanian, L.W.124-Pollachi Jayaraman, and one Madappan, and recalling P.W.8-Chenninathan, it is useful to refer Section 311, Cr.P.C., hereunder:

"Section 311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

By pointing out the language used in this Section and considering the fact that the proceeding is still pending with the Special Court, learned Public Prosecutor vehemently contended that the State is justified in filing those petitions for examination and recalling some witnesses. He also contended that while the first part of Section 311 says vesting of discretionary power on Court, the second part lays down that the grant of relief is mandatory. He very much relied on a decision of the Supreme Court in Mohanlal Shamji Soni v. Union of India, reported in 1991 Supreme Court Cases (Cri) 595 wherein, while considering Section 540 of the Old Code (Section 311 of the New Code), Their Lordships have held: (para 21)

"21. At the risk of repetition it may be said that Section 540 allows the Court to invoke its inherent power at any stage, as long as the court retains seisin of the criminal proceeding, without qualifying any limitation or prohibition. Needless to say that an enquiry or trial in a criminal proceeding comes to an end or reaches its finality when the order or judgment is pronounced and until then the court has power to use this section...."

9. It is also relevant to refer another decision of the Supreme Court in Shailendra Kumar v. State of Bihar and others, reported in 2002 Supreme Court Cases (Cri) 230: (paras 10 and 11)

"10.....Section 311 empowers the court to summon material witnesses though not summoned as witnesses and to examine or recall and re-examine if their evidence appears to it to be essential to the just decision of the case...

11. Bare reading of the aforesaid section reveals that it is of a very wide amplitude and if there is any negligence, laches or mistakes by not examining material witnesses, the court's function to render just decision by examining such witnesses at any stage is not, in any way, impaired..."

It is clear from the above decisions that the power is in the widest term exercisable at any stage so long as the court is in seisin of the proceeding. It is also clear that the said power can be exercised even if there is any negligence, laches or mistakes by not examining material witnesses. Till order/judgment is pronounced, the parties to the proceedings are entitled to invoke Section 311,Cr.P.C. In the present case, there is no dispute that proceeding is still pending with the Special Court. No doubt, the learned Public Prosecutor, after concluding his argument and at the stage of hearing the arguments of the defence counsel, has filed two applications seeking permission to examine and re-examine certain witnesses in support of their

claim. In the light of the factual position and in view of the language couched in Section 311 Cr.P.C., as interpreted by the Supreme Court, I hold that Crl.M.Ps., 526 and 527/2003 filed by the prosecution before the trial Court under Section 311 Cr.P.C. are maintainable. I shall consider later whether there is any merit in those petitions.

10. Now I shall consider whether the orders under challenge are "interlocutory"; and whether the Revision is maintainable under Section 397, Cr.P.C., and in view of the bar provided under Section 19 (3) (c) of the Prevention of Corruption Act, 1988?

11. In order to ascertain answer for the above questions, it is useful to refer the following provisions of Code of Criminal Procedure and Prevention of Corruption Act, 1988:

"Section 397 Cr.P.C. (1) x x x x
(2) The powers of Revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

Section 19 (3) of Prevention of Corruption Act.-(1) xx xx
(2)xx xx
(3) a) xx xx
(b) xx xx
(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."

By virtue of sub-section (1) of Section 397 Cr.P.C. this Court is empowered to call for records for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order of any proceedings of inferior courts, and in view of subsection (2), the said power shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. In other words, if the order under challenge is an " interlocutory order", the revisional power cannot be exercised by this Court. Likewise, as per Section 19 (3) (c) of the Prevention of corruption Act, no court shall stay the proceedings under the Prevention of Corruption Act and also shall not exercise the powers of revision to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. There is no dispute that the term "interlocutory order" has not been defined in the Code. By pointing out the fact that since the Special Court has dismissed the petitions filed under Section 311, Cr.P.C., the State lost its valuable right of examination/reexamination or recalling witnesses. He also contended that the intention of filing the petitions was to bring certain facts to the Court in connection with the case and in such a circumstance, the said order is to be construed as a final order and the bar stipulated in sub-section (2) of Section 397, Cr.P.C. and Section 19 (3) (c) of the Prevention of Corruption Act is not applicable. I am unable to appreciate the said contention for the following reasons. In this regard, it is useful to refer the recent judgment of the Apex Court in K.K. Patel

v.State of Gujarat, reported in (2000) 6 Supreme Court Cases 195. In this decision, Their Lordships have explained the test to determine " interlocutory order". In para 11, Their Lordships have held:

"11.....It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397 (2) of the Code, the sole test is not whether such order was passed during the interim stage (vide AMAR NATH v. STATE OF HARYANA (1997) 4 SCC 137; MADHU LIMAYE v. STATE OF MAHARASHTRA (1997) 4 SCC 551; V.C. SHUKLA v. STATE THROUGH CBI (1980 Supp SCC 92); and RAJENDRA KUMAR SITARAM PANDE v. UTTAM (1999) 3 SCC 134). The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397 (2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."

The same view has been followed and reiterated in subsequent decision in Bhaskar Industries Ltd., v. Bhiwani Denim and Apparels Ltd., reported in (2001) 7 Supreme Court Cases 401. The relevant passages are as follows: (paras 8, 9 and 10)

"8. The interdict contained in Section 397 (2) of the Code of Criminal Procedure (for short "the Code") is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage.

9. A three-Judge Bench of this Court in Madhu Limaye v. State of Maharashtra (1997) 4 SCC 551) laid down the following test: (SCC p.560, para 15)

"An order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397 (2)".

This was upheld by the four-Judge Bench of this Court in V.C. Shukla v. State through CBI (1980 Supp SCC 92).

10. The above position was reiterated in Rajendra Kumar Sitaram Pande v. Uttam (1999) 3 SCC 134). Again in K.K. Patel v. State of Gujarat (2000) 6 SCC 195) this Court stated thus: (SCC p.201 , para 11)

"It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397 (2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v.

State of Haryana (1977) 4 SCC 137), Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551), V.C. Shukla v. State through CBI (1980 Supp SCC 92) and Rajendra Kumar Sitaram Pande v. Uttam (1999) 3 SCC 134). The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397 (2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."

It is clear from the above decisions that by virtue of the order passed in any petition and if the order would result in culminating the proceedings, then the same cannot be termed as "interlocutory" in nature as envisaged in Section 397 (2) of the Code and Section 19(3)(c) of Prevention of Corruption Act. It is not the case of either parties that by allowing or dismissing the petitions filed by the prosecution, the entire prosecution proceedings would lapse or terminate or culminate. By applying the above test, I hold that the impugned orders are in the nature of "interlocutory orders". In such circumstances, in the light of specific bar under Section 19 (3) (c) of the Prevention of Corruption Act, the same cannot be challenged by way of Revision.

12. The learned Public Prosecutor would contend that the bar provided under clause (c) of sub-section (3) of Section 19 of the Prevention of Corruption Act is only with reference to sanction for prosecution and other miscellaneous provisions. In support of his above contention, he relied on a decision of this Court in Jayalalitha v. The State, represented by the Addl. Superintendent of Police, etc., reported in 1998-2-L.W. (Crl.) 541. In that decision, a learned Single Judge has held that the bar provided under Section 19 (3) (c) relates to matters concerning sanction for prosecution and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings which is related to sanction. Though the bar relating to grant of stay and entertaining revision is provided under Chapter V under the heading "sanction for prosecution and other miscellaneous provisions", in the light of the specific language used in clause (c) of sub-section (3) of Section 19 by referring "under this Act", it cannot be said that the bar provided in clause (c) is applicable only matters relating to sanction for prosecution. If that is so, it could be stated " under this Chapter" instead of "under this Act". The Legislature has chosen to use the word "Act" which means that a blanket bar is provided stalling the proceedings arising under the Prevention of Corruption Act, 1988. No doubt, learned Public Prosecutor by citing several instances, has stated that the Supreme Court had stayed a number of cases arising from Prevention of Corruption Act. Here again, it is to be noted that the Supreme Court gets its power under Articles 132,134 and 136 of the Constitution of India; hence the instances cited by the learned Public Prosecutor are not helpful to the cases on hand. In this regard, it is useful to refer a recent judgment of the Supreme Court in Satya Narayan Sharma vs. State of Rajasthan, reported in (2001) 8 Supreme Court Cases 607 : 2002 SCC (Crl.) 39. While analysing the scope of Section 19 (3) (c) of the Prevention of Corruption Act, S.N. Variava, J., speaking for the Bench, has held as follows: (para 17)

"17. Thus in cases under the Prevention of Corruption Act, there can be no stay of trials. We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However, even if petition under Section 482 of the Criminal Procedure Code is entertained, there can be no stay of trials under the said Act. It is then for the party to convince the court concerned to expedite the hearing of that petition. However, merely because the court concerned is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily."

In the same judgment, while concurring with the view expressed by Variava, J., Thomas, J. has held that: (para 24, 27, 28 and 29)

"24. The prohibition is couched in a language admitting of no exception whatsoever, which is clear from the provision itself. The prohibition is incorporated in sub-section (3) of section 19 of the Act. The sub-section consists of three clauses. For all the three clauses the controlling non obstante words are set out in the commencing portion as:
"19.(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973....."
Hence none of the provisions in the Code could be invoked for circumventing any one of the bans enumerated in the sub-section.

27. It is in clause (c) of the sub-section that the prohibition is couched in unexceptional terms. It reads thus:
"19.(3)(c) no court shall stay the proceedings under this Act on any other ground..."

28. The mere fact that yet another prohibition was also tagged with the above does not mean that the legislative ban contained in clause (c) is restricted only to a situation when the High Court exercises powers of revision. It would be a misinterpretation of the enactment if a court reads into clause (c) of Section 19(3) a power to grant stay in exercise of the inherent powers of the High Court.

29. We are informed that several High Courts, overlooking the said ban, are granting stay of proceedings involving offences under the Act pending before Courts of Special Judges. This might be on account of a possible chance of missing the legislative ban contained in clause (c) of sub-section (3) of Section 19 of the Act because the title to Section 19 is "Previous sanction necessary for prosecution". It would have been more advisable if the prohibition contained in sub-section (3) had been included in a separate section by providing a separate distinct title. Be that as it may, that is no ground for bypassing the legislative prohibition contained in the subsection."

The observation made by Thomas, J. in para 29 of the above decision is an answer to the claim made by the learned Public Prosecutor, which is based on the decision of this Court rendered in 1998-2-Law Weekly (Criminal) 541 (cited supra). In the light of the legal position as enunciated by the Supreme Court in the above recent judgment, it is clear that against interlocutory order passed in any enquiry, trial, appeal or other proceedings arising under the

Prevention of Corruption Act, 1988, no Court including this Court shall exercise the powers of Revision and stay the proceedings. It is relevant to mention here that only by virtue of this provision, the main Revisions themselves were taken up by me for disposal even at the earliest point of time. Accordingly, I sustain the objection raised b y the learned counsel for the respondents.

13. In the light of the above conclusion, though it is unnecessary for this Court to consider the merits or demerits of the claim made by both parties, since counsel for both sides argued at length and invited this Court to deal with the same one way or other, I am constrained to consider the same in brief. Further, in order to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any Court or to secure the ends of justice, this Court can very well consider under Section 482 of the Code of Criminal Procedure. This inherent power is available to consider any order passed by the Court subordinate to this Court. In the petitions filed under Section 311, Cr.P.C. by the prosecution before the Special Court, they prayed for to examine Balasubramanian (L.W.4), Pollachi V. Jayaram (L.W.124), and to recall Chennianathan (P.W.8) and also to examine one Madappan as additional witness, who was not examined by the investigation officer. It is seen from the order of the Special Court that P.W.112, Investigating Officer has not whispered anything about the additional witness and he was not examined under Section 161 Cr.P.C. It is further seen that during the course of examination of P.W.25, Vimala Daisy, has deposed that one Madappan who was working as Industrial Co-operative Officer was in-charge of receipt of uniform cloth during the period 1994-95. It is brought to my notice that during cross-examination, P.W.25 has stated that one Rmachandran who was working as Industrial Co-operative Officer till 27-5-95 and one Rajendran as Industrial Co-operative officer incharge for a period of 3 months. It is also brought to my notice that Ex.P-68 does not contain either the signature or initial of Madappan. When the above exhibit does not contain either the signature or initial of the additional witness Madappan sought to be examined, how far it is relevant to examine him as an additional witness by prosecution. Further, P.W.112 has also admitted in cross examination on 3-01-2003, he has not examined Madappan, Industrial Co-operative Officer and also Rajendran, Industrial Co-operative Officer It is admitted fact that P.W.25 was examined in chief on 21-3-2000 and she was further cross examined by the accused on 04-03-2002. The prosecution kept silent till filing the application i.e., on 10-6-2003. P.W.25 was examined in chief on 21-3-2000 but the prosecution filed this application after a lapse of 3-1/2 years when the final arguments is coming to the stage of conclusion. Regarding the findings made in Crl.M.P.No. 527 of 2003 with regard to examination of Pollachi Jayaraman, the Special Court has observed that the prosecution itself claimed that he did not participate in any activity and if so filing this application is not at all necessary at this stage. Further, the letter of Pollachi Jayaraman dated 10-10-94 was marked as Ex.D-4 and, therefore, necessarily he need not be called as witness in this case. Whether a person can be examined in a Court of law as a witness for prosecution without subjecting himself/herself from the provision of Section 161 (1) Cr.P.C., it is the legislatures by their wisdom to prevent the above factor and to uphold truth

in a Criminal proceedings they had enacted Section 161 (1) Cr.P.C. and they were cautious that before a person is made as a witness for prosecution, he should be subjected by the Investigating Officer as to whether he is really acquainted with the facts of the case or not or aware of it by way of hearsay or he exaggerates himself. Only when the Investigating Officer is satisfied over his credibility of his acquaintance with the facts and circumstances of the case, then he can list him as witness for prosecution and the aspect which he would be deposing. All these aspects were duly considered by the Special Court and rightly rejected the claim of the prosecution. It is also relevant to refer the applications filed by the State in which they have not stated any valid ground or reason for recalling the witnesses. I have also perused the reasoning of the learned trial Judge which would show that there is no sufficient material to accept the case of the prosecution in calling fresh witnesses and recalling witness already examined. Though I am not saying that the petitions filed under section 311 Cr.P.C. were with mala fide intention, however, I am satisfied that there is no merit in their claim. Likewise though several contentions have been raised with reference to summoning of any person as a witness, recall and re-examine any person already examined etc., in the light of my earlier conclusion, I am not inclined to elaborate the issue further, except saying that there is no merit in the petitions filed under Section 311 Cr.P.C. Even though in the earlier part of my order I have referred to the factual details of the main issue, it is made clear that I have not expressed any opinion on the issue to be decided in Special C.C.No.3 of 1997.

14. In the light of what is stated above, both the Revisions fail and are accordingly dismissed. Consequently, connected Cr.M.Ps., are closed. Since the case is at the argument stage, the Special Court is directed to dispose of the same expeditiously.

R.B.
Index:- Yes
Internet:- Yes

To:
1) The XI Additional Special Judge, Chennai.
Copy to Public Prosecutor, High Court, Madras.